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TRANSMITTED VIA E-MAIL

June 1, 2021

Caroline Thomas Jacobs
Director, Wildfire Safety Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94702
Email: wildfiresafetydivision@cpuc.ca.gov

Re: TURN's Comments on the WSD Proposed 2021 Safety Certification Guidance

Dear Director Thomas Jacobs:

The Utility Reform Network (TURN) respectfully submits these comments on the Wildfire Safety Division's (WSD)¹ proposed changes to the 2021 safety certification guidance ("Proposed Guidance") issued on May 11, 2021.

1. Introduction

Whether to approve safety certifications is one of the most important decisions that the Legislature has entrusted to WSD. A safety certification affords a utility a relaxed burden of proof under Public Utilities Code Section 451.1(c)² regarding whether a utility's conduct in causing a catastrophic wildfire is reasonable, which in turn determines whether the utility must reimburse the Wildfire Insurance Fund. In addition, a safety certification allows a utility to benefit from a cap on the amount of potential reimbursement to the Wildfire Insurance Fund based on a formula that is tied to the utility's transmission and distribution rate base. These benefits are extremely important to utilities and thus provide WSD a powerful tool to improve utility safety and prevent catastrophic wildfires. Accordingly, to effectuate the statutory purpose of the safety certification, WSD must interpret the many requirements that must be satisfied to set a high bar for safety.

In these comments, TURN will focus primarily on needed improvements to WSD's proposed implementation of the good standing requirement in § 8389(e)(2), as discussed in Section 2 below. In addition, Section 3 of these comments recommends additions to the

¹ In these comments, WSD refers also to WSD's successor, the Office of Energy Infrastructure Safety.

² All statutory references are to the Public Utilities Code unless otherwise indicated.

Proposed Guidance to ensure that non-utility parties have sufficient time and information to provide well-informed comments on the utility safety certification requests.

2. WSD Should Be Clearer and More Comprehensive in Identifying the Factors that Will Be Considered in Assessing Whether Electric Utilities Satisfy the Good Standing Requirement

a. For 2021, WSD Will Not Be Able to Rely on Any Safety Culture Assessments as a Basis for Determining Whether the Good Standing Requirement Has Been Satisfied

AB 1054 mandates that, before an electric utility can be granted a safety certification, it must satisfy each of seven enumerated provisions under Section 8389(e), including subsection (2) which requires:

(2) The electrical corporation is in good standing, which can be satisfied by the electrical corporation having agreed to implement the findings of its most recent safety culture assessment, *if applicable*. (Emphasis added.)

The words “if applicable” make clear that the good standing requirement can only be satisfied by implementation of the findings of a utility’s most recent safety culture assessment if such an assessment has taken place and has been implemented. WSD’s Proposed Guidance acknowledges that the timing of the annual WSD Safety Culture Assessments (SCA) pursuant to WSD-011 will not allow implementation of any findings before the due date for the safety certification requests. Accordingly, SCAs pursuant to WSD-011 cannot serve as a basis for satisfying the good standing requirement.

WSD’s Proposed Guidance (p. 5) states that WSD will “take into consideration the findings of any other SCAs and the extent to which an electrical corporation is implementing the associated recommendations” and references in footnote 6 “any recent findings from the Commission’s 5-year SCA.”³ However, TURN is unaware of any SCAs (other than pursuant to WSD-011) for any electric utility other than Pacific Gas and Electric (PG&E). WSD may believe that D.19-06-014 will examine the safety culture of San Diego Gas and Electric Company (SDG&E). However, the Commission has made clear that SDG&E is not a respondent to that proceeding and that the as-yet unissued consultant report will focus on Southern California Gas, not SDG&E.⁴

As for PG&E, there is no provision in CPUC docket I.15-08-019 for a new or even updated SCA of PG&E. While that docket remains open, the CPUC’s consultant, NorthStar Consulting Group, Inc., is authorized only to perform a “monitoring role,” a term which is not defined but at this point does not include any direction to perform a new or updated SCA.⁵ NorthStar’s last,

³ TURN does not understand what WSD means by “the Commission’s 5-year SCA.”

⁴ *Joint Assigned Commissioner’s and Administrative Law Judge’s Ruling on Process and Schedule for Proceeding*, July 27, 2020, p. 2.

⁵ *Administrative Law Judge’s Ruling Updating Case Status*, I.15-08-019, Sept. 4, 2020, p. 7.

abbreviated update of its more comprehensive 2017 SCA was issued in March 2019, which means it will be more than 2 ½ years out of date by the time PG&E submits its safety certification request in September 2021. Moreover, NorthStar’s March 2019 update was by its terms quite limited in scope. NorthStar only reviewed PG&E’s implementation of six of NorthStar’s over 60 recommendations to PG&E in NorthStar’s 2017 report. The March 2019 update makes clear: “In accordance with SED’s direction, NorthStar did not review the status of all recommendations or perform a detailed follow-up review of PG&E’s safety culture.”⁶ PG&E should not be allowed to rely on implementation of such an outdated and incomplete review of PG&E’s safety culture to satisfy the good standing requirement, as it would be contrary to the requirement of Section 8389(e)(2) to base this determination on implementation of a “recent” SCA.

Accordingly, for 2021, WSD should not rely on any SCA – either pursuant to WSD-011 or a CPUC docket -- as a basis for assessing satisfaction of the good standing requirement for any utility. Indeed, it would be legal error for WSD to do so.

b. WSD Needs to Be Clearer and More Comprehensive in Specifying the Criteria for Assessing Whether a Utility Meets the Good Standing Requirement

Section 2.2.3.2 of WSD’s Proposed Guidance (p. 5) states that WSD is proposing “additional criteria” for the good standing requirement. WSD gives one “example” of such criteria, namely whether the utility has been found by CAL FIRE to have caused a catastrophic wildfire and WSD finds that the utility was not in compliance with all relevant WMP initiatives at the time. While this one “example” is generally on the right track from TURN’s perspective, it needs to be modified and supplemented with other criteria that the utilities must address in their submissions and that WSD will consider in its deliberations.

In crafting criteria for the good standing requirement, it is necessary to keep in mind the purpose and effect of the safety certification. As noted, a key benefit to a utility is to confer a presumption of reasonableness in proceedings to determine cost responsibility for catastrophic wildfires, pursuant to Section 451.1(c). The safety certification – and the good standing requirement specifically – is how the utility must demonstrate that it warrants such a presumption. It would defeat the purpose of the statute to confer a presumption of reasonableness on a utility with a demonstrated track record of unsafe behavior in any respect related to wildfire prevention and mitigation. A utility does not deserve to be found in good standing and therefore presumed to have acted reasonably if its conduct and performance provide reason for doubt about the safety and reasonableness of the utility’s conduct.

With this statutory purpose in mind, TURN recommends the following minimum criteria for the good standing requirement in 2021:

⁶ NorthStar Consulting Group, First Update to Assessment of PG&E’s Safety Culture, I.15-08-019, March 29, 2019, p. I-1 (emphasis added).

- Whether a utility has been convicted of a crime in relation to causing a catastrophic wildfire, including a criminal conviction resulting from a plea agreement;
- Whether CAL FIRE has found that the utility caused a catastrophic wildfire as a result of a violation of applicable law or other unreasonable conduct;
- Whether a court-appointed federal monitor or other safety monitor has found that the utility engaged in unreasonable conduct that materially increased the risk of a catastrophic wildfire; and
- Whether audit or other investigative findings by the CPUC or WSD reflect conduct that materially increased the risk of a catastrophic wildfire.

If any of these criteria have been triggered after the time of the utility's prior safety certification request, WSD should apply a rebuttable presumption that the utility has not satisfied the good standing requirement. Accordingly, the utilities' 2021 safety certification requests should address, for each of these criteria: (1) whether the criterion applies; and (2) if it applies, why the utility should nevertheless be found to be in good standing. Non-utility comments on the safety certification requests should also address these points.

In addition, drawing on WSD's 2020 guidance regarding information to be addressed under the good standing requirement,⁷ TURN recommends that the utilities be required to submit the following additional information that may inform WSD's determination:

- For the year ending July 30, 2021, the number of fatalities from wildfires ignited by utility infrastructure and/or equipment, including an explanation of how this number compares to previous years;
- For the year ending July 30, 2021, the number of public fatalities from utility infrastructure and/or equipment, other than those caused by wildfire ignitions, including an explanation of how this number compares to previous years;
- For the year ending July 30, 2021, the number of structures damaged and/or destroyed by wildfires ignited by utility infrastructure and/or equipment, including an explanation of how this number compares to previous years;
- For the year ending July 30, 2021, the number of worker and contractor fatalities and incidents, including an explanation of how this number compares to previous years; and
- Any other information that WSD considers germane to whether the utility is entitled to a presumption of reasonableness under Section 451.1(c).

⁷ See WSD's May 6, 2020 letter regarding guidance concerning 2020 Safety Certification requests.

Utilities should provide documentation regarding each of these items in their safety certification requests and explain their perspective on how this information should affect WSD's determination regarding the good standing requirement. Non-utility parties should likewise be invited to address this information in their comments on the utilities' requests.

TURN submits that the four criteria set forth above, supplemented by the above-described additional information, will provide WSD the record it needs to make an informed determination regarding the good standing requirement that is consistent with the statutory purpose of that key provision.

3. WSD Should Allow Parties At Least 30 Days to Prepare their Comments on the Utility Submissions and Allow for Expedited Discovery

WSD's Proposed Guidance contemplates that PG&E, SCE and SDG&E would submit their safety certification requests on September 13, 2021 and that WSD would issue its decision on those requests on December 13, 2021. WSD should add to the schedule a date that allows non-utility commenters at least 30 days to respond to the utility submissions. In addition, WSD should make clear that utilities should respond to data requests on an expedited basis as in the case of wildfire mitigation plans (WMP)-- within three business days of the data request.

Thirty days is the minimum period that should be afforded for analysis and preparation of comments on the utility requests. WSD will be required to exercise judgment on many of the required elements and should have the benefit of well-informed and thoughtful comments from non-utility parties on those issues. As noted, the good standing requirement under § 8389(e)(2) will require analysis of a significant volume of information and the exercise of judgment on how that information should be interpreted. Similarly, WSD would benefit from the informed analysis and perspective of non-utility commenters on judgment-based issues such as whether the members of the utilities' board safety committees have sufficient and relevant safety experience (§ 8389(e)(3)) and whether the utilities are sufficiently implementing their WMPs (§8389(e)(7)). Commenting parties will be faced with simultaneous and voluminous submissions from California's three largest electric utilities and would be hard-pressed to conduct the necessary analysis and to draft insightful comments within anything less than 30 days. Accordingly, TURN urges that 30 days be established as the minimum period for comments on the utility requests.

Parties, including utilities, should be allowed no more than 10 days to submit reply comments that respond to the non-utility comments.

In addition, WSD should make clear that utilities are required to respond to data requests and to do so within three business days. Data requests are an important way to address factual gaps and ambiguities in the utilities' requests and will allow WSD to have a more complete and better-informed record for its determination. In addition, the utilities should be required to simultaneously share with the R.18-10-007 service list any responses they provide to follow-up requests from WSD, whether or not such requests are denominated as data requests.

4. TURN Supports the Proposed Requirements Related to Establishing Board-Level Reporting to the Commission on Safety Issues

WSD's Proposed Guidance states WSD's intention to initiate a public meeting in which a utility board member would brief the Commission on safety performance and other relevant issues. TURN supports this proposed implementation of § 8389(e)(5) as a transparent way to comply with the requirement to establish board-level reporting to the Commission on safety issues. Such a statutory requirement should not be allowed to be satisfied by private meetings that are closed to the public.

5. Conclusion

For the reasons set forth above, WSD should modify its Proposed Guidance to: (1) include the recommended additional criteria and information described in Section 2(b) of these comments for the good standing requirement; and (2) add to the schedule a date that allows non-utility commenters at least 30 days to respond to the utility submissions; and (3) state that utilities will be required to respond to data requests regarding their safety certification submissions within three business days of the data request.

Sincerely,

A handwritten signature in black ink, appearing to read "TJ Long", is positioned above the typed name.

Thomas J. Long, Legal Director

Cc: Service List for R.18-10-007